Supreme Court, U.S.
FILED
MAY 24 1993
OFFICE OF THE CLERK

No. 92-1702

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CARL A. MAAS, ET AL.
Petitioners,

v.

TEXAS AIR CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BARRY P. SIMON
SENIOR VICE PRESIDENT
AND GENERAL COUNSEL

DANIEL P. CASEY
ASSOCIATE GENERAL COUNSEL
CONTINENTAL AIRLINES, INC.
2929 ALLEN PARKWAY
HOUSTON, TEXAS 77019
(713) 834-5131

CHARLES A. SHANOR*
JON A. GEIER
PAUL, HASTINGS, JANOFSKY & WALKER
1050 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20036
(202) 223-9000

ATTORNEYS FOR RESPONDENT

**COUNSEL OF RECORD*

MAY 24, 1993

QUESTION PRESENTED

Whether the Texas state courts erred in their interpretation of state contract law when they dismissed Petitioners' breach of contract action, where Petitioners sought to bypass an exclusive arbitration clause and enforce an agreement which had not only expired, but to which Petitioners were not even parties?

LIST OF PARTIES

Petitioners and appellants in the Texas Court of Appeals are a group of 280 present and former pilots of Continental Airlines, Inc. ("Continental"). Two hundred and sixty-five of the 280 listed Petitioners have settled the claims at issue here.

Respondent below was Texas Air Corporation (also known as Continental Airlines Holdings, Inc.), at the time the corporate parent of Continental. On April 27, 1993, pursuant to a plan of reorganization confirmed by the Delaware Bankruptcy Court, *In re Continental Airlines, Inc.*, Case Nos. 90-932 through 90-984 (Bankr. D. Del.), Continental was restructured and is the successor in interest by merger to Continental Airlines Holdings, Inc.

RULE 29.1 STATEMENT

Continental Airlines, Inc. is the a 91% owner of Continental Micronesia, Inc. It has no parent or other non-wholly owned subsidiaries.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES ii

RULE 29.1 STATEMENT ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 2

ARGUMENTS IN OPPOSITION TO CERTIORARI . . 4

CONCLUSION 7

TABLE OF AUTHORITIES

CASES: Page(s)

In re Continental Airlines Corp., 901 F.2d 1259 (5th Cir. 1990), *cert. denied*, 113 S. Ct. 87 (1992)β, 5

Gryger v. Burke, 334 U.S. 728 (1948) 6

O'Neill v. Texas Air Corp., No. 89-2455 (5th Cir. April 13, 1990) 3

STATUTES

11 U.S.C. § 108(c)(2) 1

11 U.S.C. § 365 . . . . . 2, 6

11 U.S.C. § 1101 2

28 U.S.C. § 1257 . . . . . 1, 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

No. 92-1702

CARL A. MAAS, ET AL.,

Petitioners

v.

TEXAS AIR CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondent respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the opinion by the Court of Appeals for the First District of Texas.

OPINIONS BELOW

The opinion of the Court of Appeals for the First District of Texas is unpublished (Pet. App. A). The Orders denying rehearing and rehearing en banc are both unpublished (Pet. Apps. B and C), as are the Order denying application for a writ of error to the Texas Supreme Court and the Order denying a motion for rehearing of that application for writ of error (Pet. Apps. E and F).

JURISDICTION

The automatic stay created when Respondent filed bankruptcy on December 3, 1990 was lifted on March 26, 1993 (Pet. App. G) permitting this petition for certiorari to go forward. Thereafter the petition was timely filed under 11 U.S.C. § 108(c)(2). However, Petitioner improperly invokes jurisdiction under 28 U.S.C. § 1257. The decision below does not call in question any of the grounds for issuing a writ of certiorari under that section. Moreover, pursuant to Section 1257 a writ of certiorari can only be had to "final judgements or decrees rendered by the highest court of a state." Here, the petition for certiorari is defective on its face. Although Petitioners sought but were denied review by the Texas Supreme Court, the Petition seeks a writ of certiorari to the Court of Appeals for the First District of Texas, which is not the highest Texas state court.

STATEMENT OF THE CASE

In 1982, Continental and the Air Line Pilots Association, International ("ALPA), the union then representing Continental's pilots, entered into a series of agreements, including amendments to their collective bargaining agreement and various other agreements dealing with the operational merger between Continental and another airline. At the same time, Respondent and ALPA entered in to an agreement referred to as the "Side Letter," the

provisions of which specifically pertained to Respondent's right to form additional airline subsidiaries. The Side Letter expressly provided that it would "run concurrently with the Duration section of the [Continental] Basic Agreement," and that any dispute as to its terms "must be brought by arbitration." Pet. App. H.

In September 1983, Continental filed for Chapter 11 reorganization, 11 U.S.C. § 1101, and moved to reject the pilots' collective bargaining agreement pursuant to 11 U.S.C. § 365. That motion was ultimately granted and the pilot labor contract was deemed rejected as of the day prior to Continental's bankruptcy filing. *In re Continental Airlines Corp.*, 901 F.2d 1259, 1264 (5th Cir. 1990), *cert. denied*, 113 S. Ct. 87 (1992).

After ALPA filed a demand for arbitration under the Side Letter, in January 1984, Respondent filed suit for a declaratory judgment that the Side Letter had expired pursuant to its duration clause. *Texas Air Corp. v. Air Line Pilots Association*, Civil Action No. 84-530 (S.D. Tex.). Prior to a final resolution of that case, however, Continental and ALPA reached a global settlement of claims and litigation. As to Respondent's Side Letter litigation the settlement provided that it would be "dismissed with prejudice," with the additional notation, "ALPA to withdraw with prejudice its request for arbitration and waive all claims arising under the [ ] Side Letter." Res. App. at 3a.

Despite their union's settlement, a group of pilots, on behalf of a purported class which would have included Petitioners, sought to intervene as "third party beneficiaries" of the Side Letter litigation and to force an arbitration in their own name. Respondent resisted and the District Court denied intervention. In an unpublished opinion, that decision was upheld by the Court of Appeals for the Fifth Circuit. *O'Neill v. Texas Air Corp.*, No. 89-2455, (5th Cir. April 13, 1990). *See* Res. App. The Court held that "[t]he Side Letter is a

contract between [Respondent] and ALPA. The pilots were not parties to the Side Letter and were not granted any right to enforce its terms. Indeed, the Side Letter gives ALPA the exclusive authority to enforce its terms and to settle disputes arising under the Side Letter." Res. App. at 4a.

Immediately prior to the settlement between Continental and ALPA, Petitioners filed their complaint in Texas state court. Respondent subsequently filed a motion for summary judgment on a variety of grounds, including (1) that as a matter of contract interpretation (a) the Side Letter only provided enforcement through arbitration and (b) the Side Letter had been extinguished with the rejection of Continental's Basic Agreement, (2) Petitioners were not third-party beneficiaries under the Side Letter, and (3) ALPA had settled all claims under the Side Letter. Respondent's motion was granted. On appeal, the Court of Appeals for the First District of Texas affirmed, holding as a matter of contract interpretation under state law that the Side Letter had expired by its terms and, in any event, arbitration was the only available forum for enforcement. The Texas Supreme Court refused to review the Court of Appeals decision, and this petition followed.

ARGUMENTS IN OPPOSITION TO CERTIORARI

This case, which involves a fact-based issue of contract interpretation under Texas state law, is wholly inappropriate for consideration by this Court. This case involves no conflict between the decision of the Court of Appeals for the First District of Texas and the decision of any other court, federal or state.[1] There is no question in this

---

1 A writ of certiorari is also inappropriate because there is no jurisdiction under 28 U.S.C. § 1257. *See supra* at 2.

case of significance to anyone other than the few remaining parties.[2]

No more than a summary response to the reasons asserted by Petitioners for granting the writ is merited. Contrary to Petitioner's assertions at pp. 6-7, which are wholly unsupported by citation to relevant authority, there is no issue of national labor policy involved in this case. Indeed, Respondent is unable even to ascertain the nature of the conflict suggested by Petitioners. They appear to suggest, however, that this case raises issues relating to a conflict between labor and bankruptcy law arising from the rejection of a collective bargaining agreement. It clearly does not. Moreover, this Court has already denied a writ of certiorari filed by some of these same Petitioners in a related case arising out of the same set of facts which directly implicated that precise issue. *In re Continental Airlines Corp.*, 901 F.2d 1259 (5th Cir. 1990), *cert. denied*, 113 S. Ct. 87 (1992).[3] It is unthinkable that this Court would now permit through the "back door" this previously rejected claim.

The second reason proffered in support of the writ, that the decision below "is contrary to 11 U.S.C. § 365(a),"

---

2 Contrary to the assertion of the Petition, only fifteen Petitioners retain any interest in these proceedings. The other two hundred sixty-five named Petitioners have executed waivers releasing their claims.

3 Petitioner in *In re Continental* was the O'Neill Group, a group of approximately 450 current and former Continental pilots. Most of the 280 current Petitioners were also members of the O'Neill Group. That case involved the proper calculation of contract rejection damages where the Petitioners had gone on strike. Consistent with federal labor law, the Fifth Circuit held, *inter alia*, that employees are not entitled to contract rejection damages for periods of time spent on strike. 901 F.2d at 1265-66. The O'Neill Group argued in its petition for certiorari that such a result created a conflict between federal labor law and bankruptcy law worthy of review. This Court denied the O'Neill Group's petition.

Petition at 7-8, is equally devoid of merit. The agreement upon which Petitioners seek to rely says on its face that it "shall run concurrently with the duration section of the [Continental] Basic Agreement, as modified." That Basic Agreement was rejected in a bankruptcy decision *not under review in this case*. The Texas court merely applied state law principles of contract interpretation based upon that decision. No Section 365(a) issue exists because Section 365(a) was never mentioned by the court below.

Petitioners' also contend that a writ is justified because the Texas court's decision is "plainly wrong," and can not serve as an "adequate state ground" for that decision. Petition at 9-10. Unlike the first two reasons, which purport to have federal law components, this more candid request asks that this Court reverse a decision on state law made by a state court. This Court's jurisdiction is not properly invoked simply to correct perceived erroneous state law interpretations, even when they are claimed to be "plainly wrong." *Cf. Gryger v. Burke*, 334 U.S. 728, 731 (1948) (if mere error was a denial of due process, then "every erroneous decision by a state court on state law would come [to this Court] as a federal constitutional question.").

Finally, Petitioners seek to rebut other arguments Respondent raised below, but which they concede were not relied upon by the Texas court. Petition at 10-14. None of these merits-oriented arguments need detain this Court, for all concern matters of state law or minute fact issues (like the date upon which Petitioners filed their state law complaint), which are simply inappropriate for this Court's review.[4]

---

4 Petitioner's reason IV.A concerns whether they were "third party beneficiaries" under state law; reason IV.B concerns whether Petitioners, as a matter of fact, waived their claims; reason IV.C concerns admittedly "state law contract claims" and the "defense of failure to mitigate damages."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Barry P. Simon
Senior Vice President
and General Counsel

Daniel P. Casey
Associate General Counsel
Continental Airlines, Inc.
2929 Allen Parkway
Houston, Texas 77019
(713) 834-5131

Charles A. Shanor*
Jon A. Geier
Paul, Hastings, Janofsky
& Walker
1050 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20036
(202) 223-9000

Attorneys for Respondent

May 24, 1993

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2455

TEXAS AIR CORPORATION,

Plaintiff-Appellee,

and

CONTINENTAL AIR LINES, INC.,

Party In Interest-Appellee,

v.

AIR LINE PILOTS ASSOCIATION,

Defendant,

v.

JOSEPH E. O'NEILL, PHILLIP M. ORDWAY, JAMES LOWRY, and JACK PENDLETON, Etc.,

Intervenors-Appellants,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS
(CA H 84 530)
(April 13, 1990)

Before BROWN, JOLLY, AND DAVIS, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

On August 18, 1982, Texas Air Corporation ("TAC"), the parent of Continental Air Lines ("Continental"), and the Air Line Pilots Association ("ALPA") executed a Letter of Agreement ("the Side Letter") in which TAC agreed "to provide reassurances that it is aware of and will abide by" the contemporaneously executed "Prosperity Plan" collective bargaining agreements between Continental and ALPA. Continental filed a Chapter 11 bankruptcy petition on September 24, 1983. On October 1, 1983, ALPA commenced a strike against Continental.

On January 31, 1984, TAC commenced this action seeking a declaratory judgment that the arbitration provision in the Side Letter could not be enforced because of Continental's bankruptcy. On January 23, 1985, the district court ruled that the dispute was covered by the Side Letter's arbitration clause, and it granted ALPA's motion to compel arbitration. TAC filed a timely motion to alter or amend the district court's order.

Following intensive settlement negotiations, on October 30, 1985, Continental and ALPA agreed to resolve ALPA's strike and to settle related litigation and bankruptcy claims. After resolving most of the issues through negotiations, Continental and ALPA agreed to submit the remaining issues to Bankruptcy Judge Roberts, whom the parties designated by agreement to act as an interest

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the Court has determined that this opinion should not be published.

arbitrator, in order to finalize the settlement. On October 31, 1985, Judge Roberts entered an Order and Award setting forth the terms of the settlement. The Order and Award ended ALPA's strike against Continental and contained back-to-work provisions. The Order and Award also required Continental and ALPA to dismiss strike-related litigation. An attachment to the Order and Award included the instant case as number five in a list of eighteen pending litigation matters to be "dismissed with prejudice," with the additional notation, "ALPA to withdraw with prejudice its request for arbitration and waive all claims arising under the TAC-ALPA Side Letter." The instant suit, however, remained pending despite the language of the Order and Award.

On February 18, 1986, while the TAC motion to alter or amend the district court's order compelling arbitration was still pending, the pilot-appellants in this case ("the O'Neill Group") moved as a class to intervene as of right in ALPA's claim against TAC pursuant to Fed.R.Civ.P. 24(a). The O'Neill Group pilots sought an order requiring TAC to arbitrate with them in ALPA's stead.

On July 28, 1987, the district court granted the pilots' motions to intervene and denied TAC's motion to alter or amend the order compelling arbitration.

On August 3, 1987, TAC filed a motion to vacate the order compelling arbitration. The O'Neill Group filed a cross-motion to enforce the order compelling arbitration. Although no motion to vacate the intervention order was pending before it, the district court vacated its previous order granting the pilots intervention of right, vacated the order compelling arbitration, and denied the O'Neill Group's motion to enforce the order compelling arbitration. The district court held that the pilots were not entitled to intervene because individual pilots did not have rights to enforce the Side Letter and because the pilots were bound by ALPA's agreement to dismiss this case and "waive all claims arising under the

TAC-ALPA Side Letter" in exchange for the benefits of the settlement for the striking pilots as a group. The O'Neill Group filed a timely notice of appeal.

An applicant is entitled to intervene as of right under Fed.R.Civ.P. 24(a) "when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Review of a decision to deny a motion to intervene under Fed.R.Civ.P. 24(a) based on the applicant's interest in the subject matter presents a question of law subject to de novo review. *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59 (5th Cir. 1987).

We conclude that the district court correctly denied the O'Neill Group's motion to intervene, and we affirm the judgment of the district court for the following reasons:

1. The Side Letter is a contract between TAC and ALPA. The pilots were not parties to the Side Letter and were not granted any right to enforce its terms. Indeed, the Side Letter gives ALPA the exclusive authority to enforce its terms and to settle disputes arising under the Side Letter. "Where only the parties to the labor agreement are given the power to invoke the grievance machinery, an individual may not sue to compel arbitration." *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 170-71 n.4 (5th Cir. 1971). The O'Neill Group's reliance on cases that characterize employees as third party beneficiaries of collective bargaining agreements is misplaced for two reasons: (1) the Side Letter is not a collective bargaining agreement; and (2) alternatively, none of those cases supports the proposition that an employee has standing to sue under a labor contract where the contract vests exclusive authority in the union to seek arbitration or

where the union subsequently agrees to waive and settle all disputes under the contract.

2. In the Order and Award, ALPA expressly and unambiguously agreed to waive "all claims" arising under the Side Letter. The pilots argue, however, that the strike settlement preserved their individual claims because the settlement covered only those claims that ALPA had against Continental and TAC. We disagree. As of October 31, 1985, the date of the Order and Award, the O'Neill Group had not asserted or threatened any claims under the Side Letter and had not applied for leave to intervene in the lawsuit between TAC and ALPA with respect to the Side Letter. Nothing in the settlement or in the bankruptcy court and district court orders relating to the settlement preserves any individual claims by members of the O'Neill Group with respect to the Side Letter.

3. The pilots argue that ALPA had no authority to enter into a strike settlement that would extinguish their individual claims. We hold that ALPA had authority to bind the pilots to the settlement because the Side Letter itself gave ALPA exclusive authority to settle disputes arising thereunder and, alternatively, because the Side Letter dispute arose out of a classic "major" dispute. Furthermore, even if there were some doubt as to ALPA's legal authority, the pilots are estopped to deny that authority by their repeated acknowledgment of ALPA's status as their representative and by their failure to communicate the existence of limitations on that authority or otherwise to repudiate ALPA's authority prior to ALPA's agreement to settle on their behalf.

"Major disputes" under the Railway Labor Act relate primarily to the formation of collective bargaining agreements; "minor disputes" involve the interpretation of collective bargaining agreements and the resolution of lesser disputes related to the employment relationship. *Elgin, Joliet & Eastern Ry. Co. v. Burley*, 325 U.S. 711 (1945) (*Burley I*),

aff'd on rehearing, 327 U.S. 661 (1946) (*Burley II*). Contracts that do not directly establish rates of pay may nonetheless deal with working conditions and be subject to federal labor laws. *See Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc.*, 369 U.S. 17, 26 (1962); *Morales v. Southern Pacific Transp. Co.*, 894 F.2d 743 (5th Cir. 1990) ("[s]tate law claims which grow out of the employment relationship can constitute 'minor disputes' under the Act, even when the claims do not arise directly from the collective bargaining agreement itself"). The collective bargaining representative has the exclusive right to bargain for and bind all employees in its jurisdiction where a "major dispute" is concerned. *Burley I*. With respect to a "minor dispute," however, settlement by the union "in the absence of legally sufficient authorization will not bar a suit by the individual employee to enforce his claim." *Broniman v. Great Atlantic & Pacific Tea Co.*, 353 F.2d 559, 562 (6th Cir. 1965), *cert. denied*, 384 U.S. 907 (1966).

The pilots contend that, "by analogy to" the Railway Labor Act, their claims under the Side Letter constitute a "minor dispute" because those claims involve the interpretation and enforcement of an existing agreement, the Side Letter, which by its own terms is not a collective bargaining agreement and has nothing to do with bargaining for the future. The pilots therefore contend that ALPA's settlement is not binding on them because ALPA did not have express or implied authority to settle the pilots' claims against TAC. We disagree. The O'Neill Group's claim under the Side Letter arose out of Continental's rejection of its collective bargaining agreement with ALPA, which triggered ALPA's subsequent strike. The strike settlement that ended the strike and contained detailed back-to-work provisions clearly resolved a "major" dispute. In negotiating that settlement, ALPA had the authority to settle all claims arising out of that dispute, including claims, such as those under the Side Letter, that might in other circumstances be deemed "minor" disputes. *National Airlines, Inc. v. I.A.M.*,

478 F.2d 1062 (5th Cir. 1973); *United Indus. Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969).

TAC's motion to dismiss this appeal on the grounds of res judicata and mootness is denied. We also reject both parties' arguments regarding collateral estoppel, because we conclude that application of the doctrine of collateral estoppel is inappropriate in this case.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.